

KATHRYN KENEALLY
Assistant Attorney General

LEE PERLA
Trial Attorney
U.S. Dept. of Justice
P.O. Box 683
Washington, D.C. 20044-0683
Tel: 202-616-9183
Fax: 202-307-0054
Lee.Perla@usdoj.gov

JOHN S. LEONARDO
United States Attorney
Of counsel
Attorneys for the United States of America

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALYSSA M. DAVISTER,

Defendant.

Civil No.

COMPLAINT TO RECOVER
ERRONEOUS REFUND

The United States of America ("United States"), through undersigned counsel, complains and alleges against Defendant Alyssa M. Davister ("Defendant") as follows:

JURISDICTION AND VENUE:

1. The United States initiated this civil action to recover \$41,432, plus interest according to law, erroneously refunded to Defendant on or about February 17, 2012.
2. The United States brings this civil action at the direction of the Attorney General of the United States and at the request and with the authorization of Chief Counsel of the Internal

COMPLAINT

Revenue Service, (“the Service”), a delegate of the Secretary of the Treasury, pursuant to 26 U.S.C. §§ 7401, 7405.

3. The Court has jurisdiction. 28 U.S.C. §§ 1340, 1345 and 26 U.S.C. §§ 7402(a), 7405.

4. Defendant, an individual, resides in Mesa, Arizona.

5. Because Defendant resides in this judicial district, venue lies in the District of Arizona. 28 U.S.C. §§ 1391(b), 1396.

FACTS & BACKGROUND:

6. Defendant filed a federal income tax return (Form 1040) for the 2011 tax period.

7. Defendant reported a tax liability of \$4,289 and withholding credits of \$5,443.

8. Because Defendant’s reported available withholding credit exceed the reported tax liability, the Internal Revenue Service (“Service”) should have issued a refund to the Defendant.

9. Defendant claimed a refund in the amount of \$1,154.

10. That amount, \$1,154, represented the difference between the reported available withholding credit and the reported tax liability.

11. Defendant received a refund on or about February 17, 2013.

12. The Service deposited the refund in Defendant’s Baptist Credit Union account.

13. The amount of the refund issued by the Service equaled \$44,154.

14. The amount in excess of the correct refund amount (i.e., \$43,000), is erroneous.

15. Because of a clerical error, the Service applied a \$43,000 estimated tax payment.

16. That clerical error led to the erroneous refund.

17. The Service requested that Defendant return the erroneous portion of the refund.

18. Defendant refused to do so voluntarily.

19. Instead, Defendant retained the erroneous portion of the refund (\$43,000) for her personal

1 use and enjoyment.

2 **FIRST CLAIM:**

3 **RECOVER ERRONEOUS REFUND UNDER 26 U.S.C. § 7405**

4 20. The United States repeats and re-alleges the allegations in the preceding paragraph as if
5 fully set forth here.

6 21. The Service made an erroneous refund to Defendant.

7 22. The amount of the erroneous refund equaled \$43,000.

8 23. Of that amount, \$41,432 remains due and owing.

9 24. The time for recovering the erroneous refund has not yet expired.

10 25. Under 26 U.S.C. § 7405(c), interest provided for in 26 U.S.C. § 6602, calculated at the
11 underpayment rate established under 26 U.S.C. § 6621, applies to the erroneous refund liability
12 and accrues from the date of the payment of the erroneous refund.

13 26. Therefore, Defendant is indebted to the United States in the amount of \$41,432 plus
14 interest as provided by law that accrued from February 17, 2012, which calculated through
15 September 30, 2013, equals \$1,845.92.

16 WHEREFORE, the United States of America prays as follows:

17 A. That this Court enters judgment in favor of the United States and against the Defendant
18 Alyssa Davister in the amount of \$43,277.90, plus interest accruing after February 17, 2012
19 pursuant to 26 U.S.C. §§ 6601, 6621, 6622, 7405(c), and 28 U.S.C. § 1961(c) until paid; and

20 B. That this Court award the United States costs and fees incurred in bringing this action,
21 and;

22 C. That the court award such other and further relief as it deems appropriate.
23

Respectfully submitted,

KATHRYN KENEALLY
Assistant Attorney General

/s/ Lee Perla
LEE PERLA
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683, Ben Franklin Station
Washington, D.C. 20044-0683
Tel: 202-616-9138

Of counsel
JOHN S. LEONARDO
United States Attorney
Attorneys for the United States of America